

REMARKS

The Examiner is requiring restriction in the above-identified application as follows:

Group I: Claims 1-4 and 10-13, drawn to a method of constructing a eukaryotic host and producing a heterologous protein; and

Group II: Claims 5-9, drawn to a eukaryotic host for production of a heterologous protein and a transformant obtained by introduction of a structural gene into such a eukaryotic host.

Applicants have elected, with traverse, Group I: Claims 1-4 and 10-13, for further prosecution.

The Office has classified Groups I and II as process of use and product. Using this classification, the Office has opined that the product of Group II can be used in another and materially different process than that of Group I. Applicants submit that the Office is merely opining. Applicants further submit that the Office has not met the burden of showing that the product of Group II can be used in another process materially different than the process of Group I. Accordingly, Applicants submit that restriction is improper. Applicants respectfully request withdrawal of the Restriction Requirement.

Further, Applicants traverse the Restriction Requirement on the grounds that thousands of U.S. patents have issued in which many more than two subclasses have been searched, and the Patent and Trademark Office cannot reasonably assert that a burden exists in searching only two subclasses. Applicants request withdrawal of the Restriction Requirement.

Finally, Applicants note that MPEP in §803 states:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Applicants submit that the present application is in condition for examination on the merits. Early notification to this effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Charles J. Andres, Ph.D.
Registration No. 57,537

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)